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State of Slayer's Estate

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STATE OF SLAYER'S ESTATE

The Fifth Amendment of the United States Constitution protects an individual from deprivation of life, liberty, or property, without due process of law.¹ An individual has an entitled right to fair treatment by the government.² Massachusetts recognizes that a husband and wife are part of a tenancy by the entirety in which each person owns the property as if they were the “sole” and whole owner.³ Under a tenancy by the entirety, survivorship rights exist where all property rights go to the survivor of the marriage if predeceased by the other.⁴ Husband and wife both have a vested right in the property.⁵ Massachusetts’s slayer statute prohibits any person charged with an unlawful killing of the decedent from taking any part of the decedent’s estate, even if a joint tenancy or tenancy by the entirety exists between slayer and decedent.⁶

¹ See U.S. CONST. amend. V (explaining Fifth Amendment right).

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Id.

² See *id.* (explaining due process of law under Fifth Amendment).

³ See MASS. ANN. LAWS ch. 209, § 1 (LexisNexis 2017) (“The real and personal property of any person shall, upon marriage, remain the separate property of such person, and a married person may receive, receipt for, hold, manage and dispose of property, real and personal, in the same manner as if such person were sole.”).

⁴ See MASS. ANN. LAWS ch. 191, § 15 (LexisNexis 2017) (explaining survivorship rights of tenancy by entirety).

⁵ See SHELDON F. KURTZ, MOYNIHAN’S INTRODUCTION TO THE LAW OF REAL PROPERTY 286 (4th ed. 2005) (explaining tenancy by entirety is characterized by time, title, interest, and possession).

⁶ See MASS. ANN. LAWS ch. 265, § 46 (LexisNexis 2017) (showing text of slayer statute).

The court shall prohibit any person charged with the unlawful killing of the decedent from taking from the decedent’s estate through its distribution and disposition, including property held between the person charged and the decedent in joint tenancy or by tenancy in the entirety. The court shall consider any person convicted of the unlawful killing of the decedent as predeceasing the decedent for the purpose of distribution and disposition of the decedent’s estate including property held between the person charged and the decedent in joint tenancy or by tenancy in the entirety. The bar to succession shall apply only to murder in the first degree, murder in the second degree or manslaughter; it shall not include vehicular homicide or negligent manslaughter in the death of the decedent.

The Massachusetts slayer statute's purpose is to prevent a criminal from "gaining a profit" from a crime he or she commits.⁷ The Massachusetts statute strays from its purpose and the legislature's goal by taking away the rights of individuals solely for committing a crime.⁸ The slayer statute eliminates all property rights of an individual regardless of whether those rights were obtained through a tenancy by the entirety.⁹ Therefore, the statute unconstitutionally takes away any property interest an individual already possessed prior to committing a crime.¹⁰ It is unconstitutional to deprive an individual from property that he or she already possessed a preexisting interest in without due process of law.¹¹ The Massachusetts slayer statute violates the U.S. Constitution when it states that the killer is treated as though he or she predeceased the deceased, thus making it appear as though the killer has been divested of all their rights before the death of the victim.¹² Other states have recognized this as an unconstitutional violation, and tailored their slayer statutes to sever a tenancy by the entirety when a spouse kills the other, thus turning into a tenancy in common where

Id.

⁷ See, e.g., MASS. GEN. LAWS ANN. ch. 190B, § 2-803(f) (West 2018) (explaining principle that killer cannot profit from wrong applies); RESTATEMENT (FIRST) OF RESTITUTION: QUASI CONTRACTS & CONSTRUCTIVE TRUSTS § 188 cmt. a (1937) (states principle behind purpose of slayer statute); *Slocum v. Metro. Life Ins. Co.*, 139 N.E. 816, 817 (Mass. 1923) ("That the person who commits murder, or any person claiming under him or her, should be allowed to benefit by his or her criminal act, would no doubt be contrary to public policy."); *Diamond v. Ganci*, 103 N.E.2d 716, 718 (Mass. 1952) (explaining answer depends on public policy rule which prevents murderers from profiting from their wrong).

⁸ See e.g., *In re Estate of Foleno ex rel. Thomas v. Estate of Foleno*, 772 N.E.2d 490, 494 (Ind. Ct. App. 2002) (describing purpose of slayer rule); *Neiman v. Hurff*, 93 A.2d 345, 347 (N.J. 1952) (stating no one is allowed to profit through his own wrongdoing); *Riggs v. Palmer*, 22 N.E. 188, 190 (N.Y. 1889) ("No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime."); *In re Estate of Safran*, 306 N.W.2d 27, 29 (Wis. 1981) ("The disqualification of a slayer is premised on the maxim: *Nullus commodum capere potest de injuria sua propria*, no one can attain advantage by his own wrong"); *Colton v. Wade*, 80 A.2d 923, 925-26 (Del. Ch. 1951) (explaining no one should be able to profit from crime).

⁹ See MASS. ANN. LAWS ch. 265, § 46 (LexisNexis 2017) (stating tenancy by entirety is included in forfeiture).

¹⁰ See U.S. CONST. amend. V (stating there shall be no deprivation of property without due process of law); *In re Estate of Foleno*, 772 N.E.2d at 496 ("To deprive the killer of his half of the tenancy through a constructive trust would impose an unconstitutional forfeiture."); *Nat'l City Bank v. Bledsoe*, 144 N.E.2d 710, 716 (Ind. 1957) ("These statutes would be unconstitutional if they imposed a forfeiture of property as a penalty for the murder.").

¹¹ See U.S. CONST. amend. V (stating prohibition against deprivation of property rights without due process); RESTATEMENT (FIRST) OF RESTITUTION § 188 cmt. a (1937) (stating it is unconstitutional to deprive someone of property); *Colton*, 80 A.2d at 925 (stating deprivation of property rights would be violation against constitution).

¹² See MASS. ANN. LAWS ch. 265, § 46 (LexisNexis 2017) (explaining that individual convicted of crime is considered to have predeceased victim).

the surviving spouse is given their entitled half of the property, which does not allow the killer to profit with survivorship rights.¹³

FACTS:

The Massachusetts slayer statute violates the United States Constitution.¹⁴ It takes vested property rights away from a husband or wife that has killed their spouse.¹⁵ The slayer statute needs to be amended by the legislature to ensure the rights entitled to every American citizen under the U.S. Constitution are not infringed upon.¹⁶ The slayer statute treats killers as non-existent and punishes them unequally.¹⁷ It meets its purpose of not letting criminals benefit from their crimes, but does so unconstitutionally and differently than most states.¹⁸

North Dakota is the only other state that has taken the same approach as Massachusetts when constructing their slayer statute.¹⁹ Most States that

¹³ See, e.g., *Colton*, 80 A.2d at 926 (stating it is equitable to assume net income would have been evenly divided between spouses); *In re Estate of Shields*, 584 P.2d 139, 140 (Kan. 1978) (“When Victoria Shields murdered her husband and was subsequently convicted of second degree murder, the joint tenancy was severed and terminated and she became a tenant in common with the heirs of her husband. She retains an undivided one-half interest in the property.”); *Capoccia v. Capoccia*, 505 So. 2d 624, 625 (Fla. Dist. Ct. App. 1987) (“An estate by the entirety is deemed severed when one spouse murders the other, and the property is to be treated as if it had been formerly held as a tenancy in common.”).

¹⁴ See U.S. CONST. amend. V (stating deprivation of property is not allowed without due process); RESTATEMENT (FIRST) OF RESTITUTION § 188 cmt. a (1937) (discussing it is unconstitutional under slayer statute to deprive someone of entitled property rights); *Colton*, 80 A.2d at 926 (explaining taking away preexisting rights is unconstitutional); John W. Wade, *Acquisition of Property by Willfully Killing Another – A Statutory Solution*, 49 HARV. L. REV. 715, 725-26 (1936) (“If the interest is one which has already vested, it cannot be taken away without violating the constitutional provisions as to forfeiture of estates.”).

¹⁵ See MASS. GEN. LAWS ch. 265, § 46 (2006) (codifying joint tenancies and tenancy by entirety are not exceptions to this deprivation).

¹⁶ See *id.* (stating Massachusetts slayer statute).

¹⁷ See *id.* (setting out rule that allows taking any interest shared with decedent away from killer).

¹⁸ See *id.* (explaining it does not allow killers to gain any benefit from murder); Robert F. Hennessy, Note, *Property – The Limits Of Equity: Forfeiture, Double Jeopardy, And The Massachusetts “Slayer Statute”*, 31 W. NEW ENG. L. REV. 159, 160 (2009) (stating slayer statute meets its purpose behind principle).

¹⁹ See N.D. CENT. CODE § 30.1-10-03 (2017) (“The intentional and felonious killing of the decedent voids the interests of the killer in property held with the decedent at the time of the killing as joint tenants with the right of survivorship.”); Bradley Myers, Article, *The New North Dakota Slayer Statute: Does It Cause A Criminal Forfeiture?*, 83 N.D. L. REV. 997, 999-1000 (2007) (“North Dakota has long had a legislatively adopted slayer statute on the books. Prior to the recent change, the slayer statute provided that when one joint tenant killed another, the joint tenancy was severed, with each party taking an equal share as tenants in common. The change adopted by the

instituted a slayer statute have taken two different approaches on the issue: 1) the Severance approach; and 2) the Constructive Trust approach.²⁰ Both approaches are structured as to not deprive the murderer of property he is entitled to, while still not allowing the perpetrator to profit from the murder.²¹ The Severance approach treats the tenancy by entirety like a divorce, where the tenancy is severed in half and split equally between the slayer and the victim's heirs.²² This approach recognizes a slayer's vested right before the killing and still follows its principle purpose of not allowing a criminal to benefit from a crime by diminishing their survivorship rights.²³ The Constructive Trust approach shares some similarities with both the Severance approach and how the Massachusetts slayer statute has been constructed.²⁴ It is similar to the Massachusetts slayer rule as it also

North Dakota Legislature alters this result by holding that the interest of the killer in the property becomes void.”).

²⁰ See, e.g., Wade, *supra* note 14, at 715 (explaining out of states having slayer statute, thirty of them require severance); Budwit v. Herr, 63 N.W.2d 841, 847 (Mich. 1954) (stating Michigan uses severance approach); Ashwood v. Patterson, 49 So. 2d 848, 850-51 (Fla. 1951) (stating Florida follows severance approach); Grose v. Holland, 211 S.W.2d 464, 467 (Mo. 1948) (stating Missouri follows severance approach); Colton v. Wade, 80 A.2d 923, 925 (Del. Ch. 1951) (“The court subjected the property to a constructive trust for the benefit of the decedent’s heirs in order to overcome the inequitable means utilized in an attempt to gain sole possession.”); *In re Estate of Safran*, 306 N.W.2d 27, 38 (Wis. 1981) (stating constructive trust was imposed on killer); *In re Estate of Safran*, 306 N.W.2d at 84 (citing *In Will of Wilson*, 92 N.W.2d 282, 287 (Wis. 1958)) (holding “that the murderer may take under the will, but that he takes subject to a constructive trust imposed for the benefit of alternate beneficiaries.”); Bryant v. Bryant, 137 S.E. 188, 191-92 (N.C. 1927) (imposing constructive trust on killer).

²¹ See *In re Estate of Safran*, 306 N.W.2d at 84 (explaining reasoning behind constructive trust approach); *Wilson*, 92 N.W.2d at 284 (“By imposing a constructive trust upon the murderer, the court is not making an exception to the provisions of the statutes, but is merely compelling the murderer to surrender the profits of his crime and thus preventing his unjust enrichment.”); *In re King’s Estate*, 52 N.W.2d 885, 889 (Wis. 1952) (“We believe that the last-mentioned result is the most equitable and can be justified upon the theory that the murder operates as a severance of the joint tenancy resulting in a tenancy in common whereby the murderer retains ownership to an undivided one-half interest, but gains no title in, or enjoyment of, the other half, which other half vests in the heirs-at-law and next of kin of the murdered joint tenant.”).

²² See *In re King’s Estate*, 52 N.W.2d 885, 889 (Wis. 1952). (conceptualizing severance approach as splitting property in half); Budwit v. Herr, 63 N.W.2d 841, 847 (1954) (likening severance approach to husband retaining one-half portion as if parties had been divorced); Ashwood v. Patterson, 49 So. 2d 848, 850-51 (Fla. 1951) (“The Court pointed out in both cases that the fiction of unity of estate is destroyed, and the estate severed, when the parties are divorced, since it would be inequitable to allow one or the other to take all, all things being equal.”).

²³ See Grose v. Holland, 211 S.W.2d 464, 467 (Mo. 1948) (noting principle purpose is still met without breaking constitutional rights); Barnett v. Couey, 27 S.W.2d 757, 762 (Mo. Ct. App. 1930) (explaining court recognizes vested property rights in their slayer rule).

²⁴ See MASS. GEN. LAWS ch. 265, § 46 (2006) (“The court shall consider any person convicted of the unlawful killing of the decedent as predeceasing the decedent for the purpose of distribution and disposition of the decedent’s estate including property held between the person charged and the decedent in joint tenancy or by tenancy in the entirety.”); *Estate of King*, 52 N.W.2d 885, 889 (Wis. 1952) (describing approach as to one-half division); Colton v. Wade, 80 A.2d 923, 925 (Del.

identifies the murderer as predeceasing the victim in order to destroy survivorship rights, and it is similar to the Severance approach as it ultimately recognizes that the murderer only has a preexisting vested right in one half of the property, thus giving the killer only what her or she is entitled to.²⁵

HISTORY:

In common law, killers were expressly forbidden from inheriting from their victims.²⁶ This was preceded by the doctrine of attainder, where the person convicted of murder would forfeit his property to the king due to “the corruption of the perpetrator’s blood.”²⁷ As a part of the punishment, the doctrine of forfeiture required all real and personal property of the convicted to be forfeited.²⁸ The Corruption of Blood was a doctrine that denied heirs to claim any property from the attained or murderer.²⁹ These doctrines essentially worked toward the idea that “a person who can neither

Ch. 1951) (“In equity he will be determined to hold the entire interest upon a constructive trust for those other than the defendant entitled to the estate of his co-tenant by the entirety except that the survivor is entitled to receive the commuted value of the net income of one-half of the property for the number of years of his expectancy of life.”).

²⁵ See cases cited *supra* note 24 and accompanying text (describing similarities between two approaches and Massachusetts slayer rule).

²⁶ Alison Reppy, *The Slayer’s Bounty – History of Problem in Anglo-American Law*, 19 N.Y.U. L.Q. REV. 229, 241 (1942) (“[T]he common law doctrine of attainder, forfeiture, corruption of blood and escheat . . . constituted a fairly satisfactory . . . solution to the problem of the slayer and his bounty”); Hennessy, *supra* note 18, at 162 (noting at ancient common law ability of killer to inherit was precluded); *In re Estate of Foleno ex rel. Thomas v. Estate of Foleno*, 772 N.E.2d 490, 493 (Ind. Ct. App. 2002) (“The Slayer’s Rule is of recent origin compared to other property rules whose roots are often embedded in feudalism. In England, the common law doctrines of attainder, forfeiture, corruption of blood and escheat played a prominent part in the solution of the problem of the slayer and his bounty.”).

²⁷ See Reppy, *supra* note 26, at 231 (describing details of doctrine of attainder); Hennessy, *supra* note 18, at 162 (describing that person accused of capital murder was put in state of attainder). The doctrine of attainder was used by the King to seize all property from a murderer to punish the criminal and to prevent others from committing murder. Reppy, *supra* note 26, at 231.

²⁸ See Reppy, *supra* note 26, at 232-33 (explaining doctrine of forfeiture and its reasoning for taking all property); Hennessy, *supra* note 18, at 162 (requiring complete divestiture of wrongdoer’s real and personal property under doctrine of forfeiture).

²⁹ See Reppy, *supra* note 26, at 233 (describing corruption of blood doctrine and how heirs are restricted from inheriting); Hennessy, *supra* note 18, at 162 (“Corruption of blood was a feudal doctrine that transferred the condemnation of the attained person to his heirs, ‘unto the remotest generation.’”). The corruption of blood is where the accused’s family was prohibited from inheriting from accused’s property. Reppy, *supra* note 26, at 233. The purpose of this was to prevent the killer from transferring over his property because he committed murder. *Id.*

hold, nor devise, nor inherit property is incapable of profiting from his wrong."³⁰

All of these doctrines were rendered impotent by the creation of the U.S. Constitution.³¹ These doctrines were necessary to prevent injustices, and their abolishment made it possible for killers to profit and inherit from their victims.³² The law had no way to prevent a killer from inheriting or taking property from a victim.³³ In the ensuing campaign to establish a slayer rule to prevent killers from profiting from their crimes, a conflict between law and equity emerged as states began to create slayer statutes to combat the problem (at the time referred to as the "slayer and his bounty").³⁴ Forty-seven states have structured slayer statutes to try and tip-toe the line between law and equity when restricting killers from inheriting property from their victims.³⁵ A majority of the states have tried to accomplish this by using a severance approach, a constructive trust approach, or by prohibiting the killer from accessing their property rights.³⁶

In December 2002, Massachusetts approved a law entitled "Person Charged with Unlawful Killing of Decedent Prohibited from Taking from the Decedent's Estate."³⁷ The statute prohibits anyone convicted of an unlawful killing from taking from the decedent's estate through its

³⁰ See *Riggs v. Palmer*, 22 N.E. 188, 190 (N.Y. 1889) (noting purpose behind these maxims); *Hennessy*, *supra* note 18, at 162-63 ("The effect of this intergenerational condemnation was that a wrongdoer was prevented from conveying, and his heirs from taking, any property through descent or distribution.").

³¹ See U.S. CONST. art. I, § 10, cl. 1 (prohibiting state from passing bill of Attainder); *United States v. Brown*, 381 U.S. 437, 441 (1965) ("No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . .") (quoting U.S. CONST. art. I, § 10, cl. 1). The doctrine of attainder is unconstitutional as it violates Art. I § 9 of the Constitution. *Brown*, 381 U.S. at 440. The doctrine was banned to guard against dangers of it taking over the legislative body's power of creating laws, by giving the legislature the task of rulemaking. *Id.* at 445-46.

³² See *In re Estate of Foleno ex rel. Thomas v. Estate of Foleno*, 772 N.E.2d 490, 494 (Ind. Ct. App. 2002) ("The abolishment of attainder, forfeiture, corruption of blood, and escheat thus left an unanticipated void. No longer would the sovereign emerge to confiscate a killer's property, even when the killer acquired the property by means of his crime.").

³³ See *id.* (explaining there was no law after abolishment to restrict killer from inheriting).

³⁴ See *Reppy*, *supra* note 26, at 229 (noting emergence of state laws protecting injustice enrichment of killers).

³⁵ See RESTATEMENT (THIRD) OF PROPERTY: WILLS & OTHER DONATIVE TRANSFERS § 8.4 (2003) (listing forty-seven states that have slayer statutes); *Estate of Armstrong v. Armstrong*, 170 So. 3d 510, 517 (Miss. 2015) ("Many states have enacted 'slayer statutes' intended to prevent a person who has feloniously caused the death of a decedent from inheriting or receiving any part of the estate of that decedent.").

³⁶ See cases cited *supra* note 20 and accompanying text (noting cases that indicate states using approach to balance law and equity).

³⁷ See MASS. ANN. LAWS ch. 265, § 46 (LexisNexis 2017) (stating title of Massachusetts slayer statute).

distribution and disposition.³⁸ This includes any property held between the person convicted and the decedent either in a joint tenancy or a tenancy by the entirety.³⁹ The statute attempts to accomplish this purpose by classifying the killer as having predeceased the decedent, including those who are part of a joint tenancy or tenancy by the entirety.⁴⁰ This applies to those convicted of first-degree murder, second-degree murder, or manslaughter.⁴¹ This law became effective on March 24, 2003 and is recognized as Massachusetts's current slayer statute.⁴² The statute is effective because it prohibits a killer from profiting from their crime.⁴³ The Massachusetts slayer statute is similar to other states' slayer statutes, but differs in classifying the killer as having predeceased the victim.⁴⁴ Other states have recognized and avoided the constitutional violations behind determining that the killer predeceases the decedent in cases of joint tenancy or tenancy by the entirety.⁴⁵ In regards to the joint tenancy and tenancy by the entirety, Massachusetts's slayer statute goes well beyond barring a criminal from profiting from a crime.⁴⁶ The statute violates the Fifth and Fourteenth Amendment of the United States Constitution.⁴⁷

ANALYSIS:

The Massachusetts slayer statute is unconstitutional because it violates the Fifth Amendment of the United States Constitution.⁴⁸ One

³⁸ See *id.* (noting specific purpose behind enactment).

³⁹ See *id.* (stating its inclusion of joint tenancies and tenancies by the entirety).

⁴⁰ See *id.* (explaining its approach to accomplishing its purpose). The approach behind deeming the killer to have predeceased the decedent is to make it as though the killer died before the deceased, thus giving all the property rights to the decedent. *Id.*

⁴¹ See *id.* (noting that it applies to certain crimes). "It shall not include vehicular homicide or negligent manslaughter in the death of the decedent." *Id.*

⁴² See MASS. ANN. LAWS ch. 265, § 46 (LexisNexis 2017) (mentioning relevant enactment date in amendments).

⁴³ See Wade, *supra* note 14, at 725-26 (stating specific purpose of slayer statute).

⁴⁴ See William M. McGovern, Jr., *Homicide and Succession to Property*, 68 MICH. L. REV. 65, 86 (1969) ("All authorities agree . . . that the murderer should be allowed to keep whatever right he may have during his lifetime to the income from the property, since that interest is not acquired because of the crime."); see also Hennessy, *supra* note 18, at 160 (noting difference of Massachusetts slayer rule is its approach).

⁴⁵ See Wade, *supra* note 14, at 715 (describing that states have structured their statutes with attention to possible constitutional violations).

⁴⁶ See MASS. ANN. LAWS ch. 265, § 46 (LexisNexis 2017) (stating slayer rule); see also Wade, *supra* note 14, at 715 (explaining that taking away vested property rights is unconstitutional).

⁴⁷ See U.S. CONST. amend. V (stating no deprivation of property without due process of law); U.S. CONST. amend. XIV (stating due process clause).

⁴⁸ See U.S. CONST. amend. V (stating that vested property interests cannot be deprived without due process of law); MASS. ANN. LAWS ch. 265, § 46 (LexisNexis 2018) (stating relevant slayer

purpose of the Fifth Amendment is to protect an individual's property rights.⁴⁹ Once someone has a vested property right, it cannot be taken away or forfeited.⁵⁰ The Fifth Amendment gives every individual that right regardless of whether that individual committed murder.⁵¹ The Massachusetts slayer statute is just and correct in its purpose of preventing criminals from inheriting from the estate of those they have killed, but incorrect in its forfeiture of one's vested property rights.⁵² The murderer does not deserve to benefit from his or her crime, but they do deserve to be protected by the rights our forefathers established in the Constitution.⁵³

The estate of the deceased should by all means be protected from murderers, however, a vested property interest should not be taken away in its entirety.⁵⁴ The Massachusetts slayer statute should not disregard a joint tenancy or tenancy by the entirety because they create vested property rights.⁵⁵ They provide the parties with a vested property right that cannot be

rule); Wade, *supra* note 14, at 735-38 (explaining unconstitutionality of forfeiting vested property rights); Hennessy, *supra* note 18, at 160 (noting that Massachusetts slayer statute is unconstitutional); McGovern, *supra* note 44, at 86 (explaining that it is unconstitutional to take away individual's property interest).

⁴⁹ See U.S. CONST. amend. V (stating no deprivation of property without due process of law).

⁵⁰ See *id.* (explaining that one's right to his or her vested property interest is protected); Wade, *supra* note 14, at 715 (noting that vested property rights cannot be taken away following crime); McGovern, *supra* note 44, at 86 (noting that vested property rights should not be forfeited).

⁵¹ See U.S. CONST. amend. V (providing individuals protected right to property); McGovern, *supra* note 44, at 86 (explaining that vested interest cannot be taken away because that person committed murder).

⁵² See MASS. ANN. LAWS ch. 265, § 46 (LexisNexis 2018) (stating slayer statute); Hennessy, *supra* note 18, at 181 ("The Massachusetts slayer statute prevents a killer from inheriting from their victim but does not keep in mind the constitutional rights of the killer.").

⁵³ See MASS. GEN. LAWS ch. 265, § 46 (2006) (stating no murderer may benefit from committing a crime); Colton, 80 A.2d at 925 (stating slayer shall not gain profit from crime); Slocum, 139 N.E. at 817 (explaining slayer should not benefit from committing crime as it would be against public policy); Hennessy, *supra* note 18, at 181 ("In passing such a law, the drafters have ignored more than a century of case law from other jurisdictions that carefully balanced the need to honor the interests that citizens have in their property with the indisputable moral justification for denying slayers the right to succeed to their victims' property.").

⁵⁴ See Wade, *supra* note 14, at 725-26 (stating if interest is vested, it cannot be taken away without violating constitutional provisions); Barnett v. Couey, 27 S.W.2d 757, 762

(Mo. Ct. App. 1930) (stating that slayer rule has recognizable vested rights); Hennessy, *supra* note 18, at 173 ("If it is accepted that a slayer is not actually being deprived of property at all, due process protections are not violated. Likewise, a statute that deprives a defendant of no vested property interest will likely not be considered punitive and thus will not form the basis of a double jeopardy claim. The conclusion to be drawn, therefore, is that a statute that solely prevents a slayer from acquiring property from her victim and does not take any property from her is constitutional. By the same token, a statute depriving a slayer of a vested property interest will be unconstitutional. Such a deprivation may be both an impermissible forfeiture and a violation of other constitutional protections, such as the prohibitions against double jeopardy.").

⁵⁵ See Myers, *supra* note 19, at 1009 ("A slayer statute should only be used to prevent a killer from receiving the property of the victim and joint tenancy property is owned, at least in part, by

taken away without violating their constitutional rights.⁵⁶ A joint tenancy and tenancy by the entirety both create vested property rights that are not transferable.⁵⁷ A tenancy by the entirety is made between a husband and wife, giving each of them full and non-transferable property rights.⁵⁸

An exception to this would apply when a husband or wife kills the other in order to inherit from the deceased person's estate.⁵⁹ The exception could follow the Severance approach in which the property, of which both parties have a vested interest, will be severed in half.⁶⁰ One half of the property interest would be given to the murderer and the other half would be

the killer."); Hennessy, *supra* note 18, at 181 ("Rather than severing the interests in the property or imposing an equitable trust, the Massachusetts statute explicitly requires that property held jointly or by the entirety be distributed as if the slayer had predeceased the decedent. The consequence of this approach is that, by operation of law, all property interests, including vested interests, held by a surviving joint tenant are forfeited by operation of the statute.").

⁵⁶ See Myers, *supra* note 19, at 1009 ("Joint tenancy is defined as ownership 'by several persons in equal shares by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy. Joint tenants have the right of survivorship, meaning that no probate or other proceeding is necessary to pass the property to the surviving joint tenants on death. This right was deemed to exist because the joint tenants, as a group, are deemed to own the property. Under this theory, each of the joint tenants owns the undivided whole of the property. When one member of the group dies, nothing transfers from the deceased to the other joint tenants. Rather, the ownership of the property continues in the joint tenant group, albeit now reduced in number by the loss of the decedent.'").

⁵⁷ See *id.* (explaining interests created by joint tenancy); Hennessy, *supra* note 18, at 181 ("The Massachusetts slayer rule when applied to joint tenants and tenants by the entirety, it divests a perpetrator of property in which he has a vested and preexistent legal interest.").

⁵⁸ See Myers, *supra* note 19, at 1009 (explaining that survivorship rights exist under joint tenancy); Hennessy, *supra* note 18, at 175 ("When one joint tenant dies the surviving tenant owns the entire estate by operation of her right of survivorship. Therefore, a slayer has a substantially greater interest in property held jointly with a right of survivorship, whether as a joint tenant or as a tenant by the entirety, than she has in the nonvested expectancy interest that she stands to inherit by will or intestacy.").

⁵⁹ See Hennessy, *supra* note 18, at 175 (stating that slayer has greater interest in property jointly held).

⁶⁰ See Myers, *supra* note 19, at 1011 ("Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship."); Hennessy, *supra* note 18, at 177 ("A judicial or statutory severance of the joint interest is the most common solution to the slayer problem. Various rationales support this result. For instance, in cases of tenancy by the entirety, courts have observed that a felonious killing is analogous to a divorce or marriage dissolution in that a murderous spouse willfully dissolves the marital relationship, thereby destroying the essential element of marriage. This act severs the tenancy and the slayer loses his right of survivorship. In the case of joint tenancies, courts have found the justification for severance by parsing out the relevant interests held by a surviving joint tenant. In so doing, courts have observed that, notwithstanding the fiction that the right of survivorship delivers nothing to the survivor, an additional interest is in fact realized in the succession from joint to sole ownership. To the extent that such a gain is cognizable, statutes and the equitable powers of the court can prevent a slayer from so profiting from his wrong.").

given to the descendants of the deceased.⁶¹ A joint tenancy or tenancy by the entirety will thus lose its survivorship rights and become a tenancy in common, where a one-half interest of the property can be transferred.⁶² This ensures that the murderer's constitutional rights are not violated as he or she still receives one-half interest in the marital property, and the deceased's descendants receive one-half interest from the estate because the killer's act terminates all survivorship rights.⁶³ For example, if a wife kills her husband, she will be barred by the slayer statute from inheriting from his estate, but she will still have a one-half property interest in the marital property that they shared under a tenancy by the entirety.⁶⁴ The husband's one-half interest in the property will be given to his descendants, and the wife's constitutional right will not be violated.⁶⁵

There are many states that currently follow the Severance approach.⁶⁶ These states have recognized the constitutional violations that are created when taking away all property rights from the murderer, and have thus incorporated the severance theory, which splits the property in half, into their slayer statutes.⁶⁷ The Severance approach and Constructive Trust approach appear to be the most comprehensive solutions in regard to

⁶¹ See Hennessy, *supra* note 18, at 177 ("An unlawful act causes a severance of the tenancy, thus allowing the slayer to retain only a one-half share – not to acquire the remainder of the jointly owned interest as he normally would."); Myers, *supra* note 19, at 1012 ("The estate of the victim will hold a life estate in the other half of the property and the remainder interest in the property.").

⁶² See Myers, *supra* note 19, at 1009-11 ("Under the common law, joint tenancies required the existence of the 'four unities' of interest, title, time, and possession to exist equally for all joint tenants at the same time. A failure in one of these unities would cause the ownership of the property to transmute to a tenancy in common. Joint tenants could convert the joint tenancy to a tenancy in common at any time by destroying anyone of the four unities. The statute provided that when the killing of a joint tenant affects a severance of that tenancy, the severance of a joint tenancy results in the tenancy in common.").

⁶³ See *id.* at 1020 (noting that North Dakota slayer statute voids survivorship rights when slaying exists).

⁶⁴ See *id.* at 998 ("Enolf Snortland's estate included property that he and Robert held in joint tenancy. Applying the UPC as then effective in North Dakota, the district court ruled that the joint tenancy property was severed into equal shares of tenancy in common property, with Enolf Snortland's estate taking one share and Robert taking the other. . . . The court also ruled that Robert's son, Robbie, would receive the intestate share that Robert would have inherited. This changed the treatment of joint tenancy property when one of the joint tenants kills another.").

⁶⁵ See *id.* (explaining survivorship rights are forfeited and half interest is distributed to killer and descendant's estate); Hennessy, *supra* note 18, at 176 (stating that killer will only receive half interest).

⁶⁶ See Hennessy, *supra* note 18, at 160 ("Deeming murderous joint tenants and tenants by the entirety to have legally predeceased the decedent implicates constitutional concerns that other states have carefully avoided for more than a century.").

⁶⁷ See Myers, *supra* note 19, at 1020 (stating that North Dakota amended its slayer statute in 2007 to implement severance approach).

protecting an individual's constitutional rights while also barring them from profiting from their crime.⁶⁸

CONCLUSION:

The Massachusetts slayer statute has the purpose of barring murderers from profiting from their crimes. While it successfully fulfills this purpose, it does so by violating the constitutional rights of individuals who have a vested property interest through a joint tenancy or tenancy by the entirety. The Massachusetts slayer statute unconstitutionally deprives these individuals of a vested property interest that they are rightfully entitled to, and that they share with their husband or wife. The slayer statute violates the Fifth Amendment as it deprives an individual of their constitutionally protected property. It is necessary for Massachusetts to amend their slayer statute with the intention of making sure no constitutional rights are being violated. Specifically, Massachusetts needs to ensure that an individual who is privy to a tenancy by the entirety or joint tenancy maintains his or her right to the vested property interest. A Severance approach theory should be used to protect one's constitutional rights and to ensure the property is distributed fairly between the surviving spouse and the descendant's estate. Massachusetts must amend its slayer statute in order to discontinue violating the rights the Constitution seeks to protect.

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⁶⁸ See Hennessy, *supra* note 18, at 176-77 ("Two dominant approaches have emerged from these articulations. Under the first approach, an unlawful act causes a severance of the tenancy, thus allowing the slayer to retain only a one-half share – not to acquire the remainder of the jointly owned interest as he normally would. Under the second, the unlawful act causes some portion of the jointly held property to be held in a constructive trust for the heirs of the deceased, often limiting the slayer's retention to a one-half interest for life. The ultimate goal under both of these approaches is to prevent the slayer from benefiting in any way from his act.").